

**Before the
Administrative Hearing Commission
State of Missouri**

070815339C

2. In June of 1995, Petitioner pled nolo contendere to charges in Arkansas and was placed on five years probation. The terms of Petitioner's probation included that he not associate with any person known or whom he had reason to believe to have been convicted of or committed a crime. According to court records submitted, Petitioner was sentenced under Act 378 of 1975 (ACA §16-93-501-510) which allows Petitioner to have a clean record once probation is successfully complete. After the successful completion of the probation period, the charges may be dismissed without an adjudication of guilt.

3. In July of 1995, Petitioner was found guilty on three counts of felony stealing by deceit in the Circuit Court of Scott County, Missouri. Petitioner was sentenced to a fine on each count and a year in the county jail.

4. Petitioner paid the fines and was released after 57 days of jail time on three years' probation. This probation was consolidated with the probation in Arkansas.

5. In October of 1995, Petitioner entered an Alford plea in Stoddard County, Missouri, and was placed on three years probation.

6. All Petitioner's criminal charges stem from the same set of facts with incidents occurring in both Missouri and Arkansas and all causes were combined into one probation order. Petitioner successfully completed all his probation in October, 1998.

7. In July of 1997, Petitioner applied to be licensed as a bail bond agent. Respondent denied Petitioner a bail bond agent license and Petitioner appealed that denial to this Commission. In May of 1998, This Commission exercised its discretion

differently from the Respondent and determined that Petitioner's bail bond agent license application should be granted.

8. This Commission relied on Petitioner's evidence of rehabilitation, good moral character, and good reputation in the community when deciding that Petitioner's bail bond agent license application should be granted.

9. In October, 2000, Petitioner applied to be licensed as a **general** bail bond agent. Respondent denied Petitioner a **general** bail bond agent license and Petitioner appealed that denial to this Commission. This Commission agreed that Petitioner could not be issued a **general** bail bond agent license due to his inability to meet the requirements of a surety pursuant to Missouri Supreme Court Rule 33.17.

10. In 2005, Petitioner's bail bond agent license was renewed by the Respondent.

11. In June, 2007, Petitioner applied for a renewal of his bail bond agent license. Respondent denied Petitioner the renewal of his bail bond agent license and Petitioner appealed that denial to this Commission. This Commission held a hearing regarding this appeal on December 20, 2007.

12. Petitioner is employed by and works under the authority of Gwen Joyce dba Freedom Bail Bonds, a person with a general bail bond agent license and who is a property bail bondsman.

13. Petitioner contracts together with Gwen Joyce for the providing of bond-related services. Gwen is a General Bail bond Agent who is the surety for each bond issued by her agents. Gwen contracts with Petitioner for services in her name to be

provided in Missouri Counties. Petitioner had an expectation of earnings under the contract.

14. The Director was aware of the contract between the Petitioner and Gwen Joyce, as all bonds were issued with Gwen as the surety.

15. Petitioner has been involved in no criminal activities of any kind, including traffic offenses, since the 1995 felony incidents in Missouri and Arkansas.

16. Since being granted a bail bond agent license in 1998, Petitioner has never had a bond forfeiture. Petitioner's has demonstrated no financial responsibility risk.

17. Petitioner does not pose a threat to the courts or the public at large, nor is his integrity questionable.

Proposed Conclusions of Law

This Commission has jurisdiction to decide whether Petitioner is entitled to a bail bond agent license. § 621.120 RSMo (2000). Petitioner has the burden to show that he is entitled to licensure. § 621.120 RSMo (2000).

This Commission may exercise the same authority that has been granted to the Director, can decide the application *de novo*, and has the same degree of discretion as the Director and need not exercise it the same way. See *J.C. Nichols Co. v. Director of Revenue*, 796 S.W. 2d 16 (Mo. banc 1990) and *State Board of Regis'n for the Healing Arts v. Finch*, 514 S.W. 2d 608 (Mo. App., K.C.D. 1974).

Petitioner's application should be granted because he was previously approved for licensure under more restrictive requirements of Missouri Supreme Court Rule 33.17 despite his criminal history. Petitioner has shown evidence of rehabilitation, good moral

character and a good reputation in the community. Also, Petitioner was and would continue to be a bail bond agent employed by and working under the authority of a person with a general bail bond agent license, and therefore not a surety.

§ 374.715 RSMo (Supp. 2006) provides:

1. Applications for examination and licensure as a bail bond agent or general bail bond agent shall be in writing and on forms prescribed and furnished by the department, and shall contain such information as the department requires. Each application shall be accompanied by proof satisfactory to the department that the applicant is a citizen of the United States, is at least twenty-one years of age, has a high school diploma or general education development certificate (GED), is of good moral character, and meets the qualifications for surety on bail bonds as provided by supreme court rule. Each application shall be accompanied by the examination and application fee set by the department. Individuals currently employed as bail bond agents and general bail bond agents shall not be required to meet the education requirements needed for licensure pursuant to this section.

2. In addition, each applicant for licensure as a general bail bond agent shall furnish proof satisfactory to the department that the applicant or, if the applicant is a corporation, that each officer thereof has completed at least two years as a bail bond agent, and that the applicant possesses liquid assets of at least ten thousand dollars, along with a duly executed assignment of ten thousand dollars to the state of Missouri. The assignment shall become effective upon the applicant's violating any provision of sections 374.695 to 374.789. The assignment required by this section shall be in the form and executed in the manner prescribed by the department. The director may

require by regulation conditions by which additional assignment of assets of the general bail bond agent may occur when the circumstances of the business of the general bail bond agent warrants additional funds. However, such additional funds shall not exceed twenty-five thousand dollars.

§ 374.700(1), RSMo (2000) provides the following definitions:

(1) "Bail bond agent", a surety agent or an agent of a property bail bondsman who is duly licensed under the provisions of sections 374.700 to 374.775, is employed by and is working under the authority of a licensed general bail bond agent;

(5) "General bail bond agent", a surety agent or property bail bondsman, as defined in sections 374.700 to 374.775, who is licensed in accordance with sections 374.700 to 374.775 and who devotes at least fifty percent of his working time to the bail bond business in this state;

(8) "Property bail bondsman", a person who pledges United States currency, United States postal money orders or cashier's checks or other property as security for a bail bond in connection with a judicial proceeding, and who receives or is promised therefore money or other things of value;

(9) "Surety bail bond agent", any person appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings, and who receives or is promised money or other things of value therefor.

A licensed bail bond agent works under the authority of a licensed general bail bond agent who has the necessary net worth and meets the qualifications to be a surety. *Division of Employment Sec. v. Hatfield*, 831 S.W. 2d 216, 220 (Mo. App., W.D. 1992).

§374.702(3) RSMo (2000) provides:

A licensed bail bond agent shall not execute or issue an appearance bond in this state without holding a valid appointment from a general bail bond agent and without attaching to the appearance bond an executed and prenumbered power of attorney referencing the general bail bond agent or insurer.

Supreme Court Rule 33.17 provides that the qualifications for a surety on bail bonds:

A person shall not be accepted as a surety on any bail bond unless the person:

- (a) is reputable and at least twenty-one years of age;
- (b) has net assets with a value in excess of exemptions at least equal to the amount of the bond that are subject to execution in the state of Missouri;
- (c) has not been convicted on any felony under the laws of any state or of the United States;
- (d) is not a lawyer, except that this disqualification shall not apply if the principal is the spouse, child or family member of the surety;
- (e) is not an elected or appointed official or employee of the State of Missouri or any county or other political subdivision thereof; except that this disqualification shall not apply if the principal is the spouse, child or family member of the surety; and
- (f) has no outstanding forfeiture or unsatisfied judgment thereon entered upon any bail bond in any court of this state or of the United States.

Supreme Court Rule 33.20 provides:

- (a) Any corporation, association, or company formed under the provisions of section 379.010 RSMo, for the purpose of making surety insurance shall be qualified to

act as a surety upon any bail bond taken under the provisions of these rules upon presenting evidence satisfactory to the court of its solvency. Any such bond shall be executed in the manner provided by law.

(b) An agent acting on behalf of such a corporation shall be subject to the qualifications set forth in Rule 33.17 (c), (d), and (e) and, in addition, shall be licensed as a bail bond agent as required by law.

An agent under Rule 33.20 must meet all the licensing requirements under the statutory provisions in addition to the requirements under the rule. The Supreme Court clearly makes a distinction regarding agents and sureties when they find it necessary that a specific rule apply to an agent. No such distinction has been provided in Rule 33.17. To require that paragraphs (c), (d), and (e) apply to agents of the § 379.010 entities and then to require that those same agents also be licensed as bail bond agents as required by law makes paragraph Rule 33.20(b) redundant if according to §374.715.1 RSMo bail bond agents must meet **all** the requirements for sureties under Rule 33.17 to be licensed as a bail bond agent. Clearly, the Supreme Court did not intend that Rule 33.17 apply to all bail bond agents. If Petitioner were proposing to work as a bail bond agent under a 379 insurer, he would be subject to Paragraphs (c), (d), and (e) of Rule 33.17. Petitioner works under a general bail bond agent who is a property bail bondsman.

§374.715 (1) uses the word "or" when differentiating between the applications of the bail bond agent and general bail bond agent. Since the general bail bond agent is the surety and the bail bond agent is working under the surety, the general bail bond agent would need to meet the requirements for a surety, but the bail bond agent would

not. By using "or" the statute can be read that if the applicant is indeed the surety, the applicant meet the qualifications for surety on bail bonds. The legislature would not intend an absurd result and to hold the bail bond agent to a standard that even the rules do not require would lead to an absurd result.

§374.715(2) goes on to require the general bail bond agent to possess liquid assets of at least ten thousand dollars and assign assets in that amount to the State of Missouri. If both bail bond agents and general bail bond agents must meet the requirements for a surety, this portion of the statute becomes redundant because all applicants would have to meet an asset requirement under the Supreme Court Rules. In fact, every general bail bond agent and bail bond agent would have to possess net assets at least equal to the amount of the bond. The Missouri Uniform Renewal Application for Bail Bond or Surety Recovery License does not even ask the applicant for a bail bond agent license about net assets. If bail bond agents are required to meet the requirements for a surety, under Rule 33.17, then **all** requirements should apply. Clearly that is not the intent of the Legislature that bail bond agents be subject to the requirements of Rule 33.17 nor is the director consistent in the application of the requirements for a surety.

The statutory definition of "bail bond agent" is clear in its meaning. The bail bond agent is an "agent" of the property bail bondsman. The bail bond agent must have the authority of the general bail bond agent to act and then only by using a power of attorney referencing the general bail bond agent. The court in *Hatfield* found that a licensed bail bond agent works under the authority of a licensed general bail bond agent

who has the necessary net worth and meets the qualifications to be a surety. It is clear from both the statutes and case law that the bail bond agent is not the surety.

§374.750 RSMo (2000) provides:

The department may refuse to issue or renew any license required pursuant to sections 374.700 to 374.775 for any one or any combination of causes stated in section 374.755. The department shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

§374.755 RSMo (2000) provides in part:

...(2) Final adjudication or a plea of guilty or nolo contendere within the past fifteen years in a criminal prosecution under any state or federal law for a felony or a crime involving moral turpitude whether or not a sentence is imposed, prior to issuance of license date; (3) Use of fraud, deception, misrepresentation or bribery in securing any license or in obtaining permission to take any examination required pursuant to sections 374.695 to 374.775;...

Petitioner has been licensed as a bail bond agent consistently since 1998 even though he admitted to having felony convictions on every application for license filed with Respondent. In less than two years, the fifteen year period for disqualification will be over. Never did Petitioner fail to admit the presence of felonies on his criminal record. Petitioner truly believed that the criminal charges and subsequent pleas and convictions were consolidated into one and therefore was not using fraud, deception, or misrepresentation to secure a license. Petitioner willingly provided his fingerprints and

disclosed his criminal conviction on his 2007 application for license as a bail bond agent.

The United States Constitution provides that "[n]o State shall...pass any...Law impairing the obligation of Contracts...". U.S. Const. art. I, section 10, cl.1.

By requiring bail bond agents to meet the requirements of a surety under Rule 33.17, the state is interfering with the rights of the bail bond agent, the agent of the surety, to contract with the general bail bond agent, the surety, to be employed and to work under the authority of the general bail bond agent. The assets of the general bail bond agent are at risk if they should hire an inappropriate bail bond agent. The assets of the general bail bond agent are assigned to the state to compensate for inappropriate actions on the part of the bail bond agent. With that risk in mind, it is up to the general bail bond agent to make the decision whether to employ a bail bond agent based on his or her past criminal history.

Summary

Petitioner has met his burden and shown that he is entitled to a bail bond agent license. His application should be granted and the Director should be ordered to issue the license to him.

WHEREFORE, Petitioner respectfully requests this Commission exercise its discretion differently that the Department of insurance, Financial Institutions and Professional Registration and determine that Petitioner's bail bond agent license should be granted.

Respectfully submitted,

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Director of the Department of Insurance, Financial Institutions and Professional Registration.

II. FACTUAL BACKGROUND

In 1994 and 1995, Petitioner was charged with multiple felonies in Missouri and Arkansas relating to checks written on an account with insufficient funds. Petitioner was not a signatory on that account. Charges were filed against Petitioner in two Missouri counties and one Arkansas.

In June of 1995, Petitioner pled nolo contendere to the Arkansas charges and was sentenced to five years probation. *See Respondent's Exhibit 8; Tr. at 72.* Respondent's brief alleges that there is evidence regarding supervised to unsupervised probation in the record, but Respondent's Exhibit 8 does not include any such evidence nor was there any oral testimony to that effect.

In July of 1995, Petitioner was found guilty of three counts of class "C" felony stealing by deceit by a jury in Scott County, Missouri, and sentenced to one year in jail on each count. In September of 1995, Petitioner was granted three years probation related to the Scott County convictions. §570.030, RSMo; *See Respondent's Exhibit 3; Tr. at p. 72.* Petitioner's probation was consolidated with his probation in the Arkansas case and moved to Webster County, Missouri where he saw a probation officer. *Tr. at pgs. 83-85.* His probation officer wrote him a letter of recommendation for his first hearing before this Commission in 1998. *Tr. at p. 85.*

In October of 1995, Petitioner entered an Alford plea in Stoddard County, Missouri and was placed on three years probation. *See Respondent's Exhibit 9.* An

Alford plea is a guilty plea entered into by a defendant in connection with a plea bargain without actually admitting guilt. BLACK'S LAW DICTIONARY at 71 (7th ed. 1999).

In 1997, Petitioner applied to be licensed as a bail bond agent. On his application, Petitioner disclosed the felony convictions in Scott County, Missouri. Respondent refused Petitioner's license application based on the felony convictions on November 6, 1997. *See Respondent's Exhibit 2*. Petitioner appealed to this Commission and this Commission exercised its discretion differently from Respondent and determined that Petitioner's bail bond agent license application should be granted. *Joyce v. Director of Insurance*, No. 97-3416 DI (Mo. Admin. Hearing Comm'n May 28, 1998). Petitioner's full criminal history was presented at that hearing before this Commission. *See Tr. at pgs. 85-86 and 98-99*.

In October of 2000, while licensed as a **general** bail bond agent, Petitioner applied to be licensed as a general bail bond agent. *See Respondent's Exhibit 3*. Petitioner disclosed the 1995 felony convictions in Scott County, Missouri. Respondent refused Petitioner's license application based on the felony convictions and the Supreme Court Rule on sureties. Petitioner appealed to this Commission and on July 3, 2001, this Commission agreed with Respondent and refused to grant Petitioner a **general** bail bond agent license based on the Supreme Court rule on sureties. *Phillip L. Joyce v. Director of Insurance*, No. 00-2668 DI (Mo. Admin. Hearing Comm'n July 3, 2001). The Commission did not address the issue of whether Petitioner could be licensed as a bail bond agent.

In 2005, Respondent renewed Petitioner's bail bond agent license. Respondent did not apply Rule 33.17 to a bail bond agent. Petitioner's bail bond agent license expired on July 7, 2007. *See Respondent's Exhibit 4; Tr. at p. 30.*

In June of 2007, Petitioner applied for renewal of his bail bond agent license. *See Respondent's Exhibit 5.* Petitioner disclosed the 1995 felony convictions in Scott County, Missouri. Petitioner provided fingerprints as required by the renewal process. Respondent used those fingerprints to investigate the criminal background of Petitioner and discovered the Arkansas nolo contendere plea and the Alford plea in Stoddard County, Missouri. Petitioner believed that all the causes against him were consolidated and his probation was transferred to Webster County, Missouri. Petitioner believed that by disclosing the Scott County, Missouri convictions, he was disclosing his full criminal history. *See Tr. at p. 85.*

On July 6, 2007, Respondent refused to renew Petitioner's bail bond agent license based upon the felony convictions, felony plea, misrepresentation on the present and past applications, and the Supreme Court rule on sureties. Respondent applied Supreme Court Rule 33.17 to a bail bond agent. Petitioner appealed to this Commission on or about August 6, 2007.

On or about December 20, 2007, a hearing was held before this Commission at which oral testimony and exhibits were entered on the record.

III. Petitioner, Phillip L. Joyce, has met his burden and shown that he is entitled to a license as a bail bond agent.

Sufficient legal and factual grounds for denying Petitioner's 2007 Renewal application do not exist. Petitioner never failed to disclose the existence of felonies in

his past. On each and every application for a license filed with the Respondent, on oath that the statements contained in that application were true to the best of his knowledge and belief, he checked the "yes" box. He provided documentation when he was required to do so. He truly believed that all his charges had been consolidated and the Respondent has not provided any evidence to refute that believe.

Petitioner should not be required to meet the qualifications for surety on bail bonds as provided by Supreme Court Rules 33.17 and 33.20. A bail bond agent is not a surety. A general bail bond agent is the surety.

An agent under Rule 33.20 must meet all the licensing requirements under the statutory provisions in addition to the requirements under the rule. The Supreme Court clearly makes a distinction regarding agents and sureties when they find it necessary that a specific rule apply to an agent. No such distinction has been provided in Rule 33.17. To require that paragraphs (c), (d), and (e) apply to agents of the § 379.010 entities and then to require that those same agents also be licensed as bail bond agents as required by law makes paragraph Rule 33.20(b) redundant if according to §374.715.1 RSMo bail bond agents must meet the requirements for sureties under Rule 33.17 to be licensed as a bail bond agent. Clearly, the Supreme Court did not intend that Rule 33.17 apply to all bail bond agents. If Petitioner were proposing to work as a bail bond agent under a 379 insurer, he would be subject to Paragraphs (c), (d), and (e) of Rule 33.17. Instead, Petitioner works under a general bail bond agent who is a property bail bondsman. To determine that Rule 33.17 requirements apply to bail bond agents would result in an absurd result in that agents under Rule 33.20 would have to meet the requirements of Rule 33.20 which exclude certain paragraphs of Rule 33.17,

but then also meet all the requirements under Rule 33.17 to be licensed as a bail bond agent as required by §374.715.1 RSMo (2000). "Like the legislature, it is presumed that the Missouri Supreme Court would not enact a rule that would render an absurd result." *Synamic Computer solutions*, 91 S.W. 3d at 714; *Dalton Invs., Inc. v. Nooney Co.*, 10 S.W. 3d 590, 593 (Mo. App. E.D. 2000).

§374.715 (1) uses the word "or" when differentiating between the applications of the bail bond agent and general bail bond agent. Since the general bail bond agent is the surety and the bail bond agent is working under the surety, the general bail bond agent would need to meet the requirements for a surety, but the bail bond agent would not. By using "or" the statute can be read that if the applicant is indeed the surety, the applicant must meet the qualifications for surety on bail bonds. To decide anything else would subject bail bond agents to the same requirements as general bail bond agents, something that, by testimony from the Respondent's own witness, most bail bond agents would not be able to do. See *Tr. pgs. 18-19*. The legislature would not intend an absurd result and to hold the bail bond agent to a standard that even the rules do not require would lead to an absurd result. For the Respondent to apply only a portion of the qualifications for surety on bail bonds to bail bond agents would be an absurd result. "Like the legislature, it is presumed that the Missouri Supreme Court would not enact a rule that would render an absurd result." *Synamic Computer solutions*, 91 S.W. 3d at 714; *Dalton Invs., Inc. v. Nooney Co.*, 10 S.W. 3d 590, 593 (Mo. App. E.D. 2000).

§374.715(2) goes on to require the general bail bond agent to possess liquid assets of at least ten thousand dollars and assign assets in that amount to the State of Missouri. If both bail bond agents and general bail bond agents must meet the

requirements for a surety, this portion of the statute becomes redundant because all applicants would have to meet an asset requirement under the Supreme Court Rules. In fact, every general bail bond agent and bail bond agent would have to possess net assets at least equal to the amount of the bond. The Missouri Uniform Renewal Application for Bail Bond or Surety Recovery License does not even ask the applicant for a bail bond agent license about net assets. If bail bond agents are required to meet the requirements for a surety, under Rule 33.17, then **all** requirements should apply. Clearly that is not the intent of the Legislature that bail bond agents be subject to the requirements of Rule 33.17 nor is the director consistent in the application of the requirements for a surety.

The statutory definition of "bail bond agent" is clear in its meaning. The bail bond agent is an "agent" of the property bail bondsman. See §374.700(1) *RSMo* (2000) and §374.700(8) *RSMo* (2000). The bail bond agent must have the authority of the general bail bond agent to act and then only by using a power of attorney referencing the general bail bond agent. See §374.702.1 (3). The court in *Division of Employment Sec. v. Hatfield*, 831 S.W. 2d 216, 220 (Mo. App., W.D. 1992) found that a licensed bail bond agent works under the authority of a licensed general bail bond agent who has the necessary net worth and meets the qualifications to be a surety. It is clear from both the statutes and case law that the bail bond agent is not the surety.

Respondent would have discretion under § 374.750 and §374.755.1(2) to refuse to issue or renew Petitioner's license, but Respondent failed to use that discretion in 2005 when renewing Petitioner's license. Fairness demands that Respondent not be allowed to use that discretion now.

Petitioner has appeared before this Commission twice on the same issues. Once on a bail bond agent license application and again on a **general** bail bond agent license application. This Commission determined that in spite of felony convictions, it was appropriate that Petitioner's bail bond agent license be granted. *Joyce v. Director of Insurance*, No. 97-3416 DI (Mo. Admin. Hearing Comm'n May 28, 1998). This Commission determined that Petitioner could not be licensed as a **general** bail bond agent because he could not meet the requirements for a surety under the Supreme Court Rules and that Respondent had no discretion in granting a license under those circumstances. *Phillip L. Joyce v. Director of Insurance*, No. 00-2668 DI (Mo. Admin. Hearing Comm'n July 3, 2001). Through 2005, the Respondent did not apply Rule 33.17 to bail bond agents, only to **general** bail bond agents. See *Tr. at pgs. 43-44 and 46*.

Respondent has tried to introduce evidence of the reason for the change in application of the rules in his brief (*Respondent's Brief*, paragraph 19 and footnote 9) Petitioner would ask this commission to disregard this evidence since it was not introduced at the hearing or in any other initial pleadings. Respondent's witness testified that there were some issues and concerns raised in 2005 regarding those with criminal histories holding bail bond agent licenses, but no specific incidences were mentioned. See *Tr. at p. 43*. Respondent is applying Rule 33.17(b) to those applying for a bail bond agent license. Respondent has started applying Rule 33.17 to bail bond agents with no statutory change or rule change. See *Tr. at pgs. 44-45*. Respondent fails to apply all of Rule 33.17 to bail bond agents, only a portion. See *Tr. at pgs. 46-51*. If the Respondent is going to make the determination that both general bail bond agents

and bail bond agents must meet the qualifications for surety on bail bonds as provided by supreme court rule, then all paragraphs of the rule should apply.

IV. CONCLUSION

Based on the Respondent's failure to consistently apply the statutes and Supreme Court Rules to bail bond agents and his failure to exercise his discretion in regard to Petitioner's past felonies,

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